

SUPERFUND STATE CONTRACT FOR ADVANCE FUNDING
TO COMPLETE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
AT THE SUMMIT NATIONAL SITE, PORTAGE COUNTY,
BETWEEN THE STATE OF OHIO AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY

A. Authority

This Contract is entered into pursuant to Sections 104(a)(1), (c)(2), and (d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9604(a)(1), (c)(2), and (d)(1) and Section 3734.20(B) of the Ohio Revised Code.

B. Purpose

1. This Contract is an agreement between the United States Environmental Protection Agency (U.S. EPA) and the Ohio Environmental Protection Agency on behalf of the State of Ohio (the State) to undertake completion of Phase II of the Remedial Investigation (RI) and Feasibility Study (FS) at the Summit National Site in Portage County.
2. Attached hereto and incorporated herein as an Appendix is the work plan to be performed under this Contract. This Contract may be amended by the procedure provided in paragraph R of this Contract, if the parties agree to undertake additional remedial design or remedial action beyond the scope of the work plan.
3. The purpose of this Contract is to delineate the responsibilities of the parties and provide assurances required by CERCLA.
4. This Contract will become effective upon execution by the State and U.S. EPA, and shall remain in effect until completion of the activities described in the work plan and any agreed amendments hereto.

C. Parties

1. This Contract is entered into by the U.S. EPA and the Ohio EPA. The Attorney General of Ohio has certified that the Ohio EPA has the legal authority to enter into and to fulfill the terms of this Contract on behalf of the State of Ohio.
2. It is expressly understood by the parties that none of the rights, duties or obligations described in this Contract shall be binding until such time as the expenditure of funds is certified by the Ohio Director of Administrative Services, Ohio Revised Code 131.17, approved by the Ohio Office of Budget and Management, Ohio Revised Code 126.02, and approved by the Ohio Controlling Board when required pursuant to Ohio Revised Code 127.16.
3. The U.S. EPA has designated Diane Moshman, Remedial Project Manager, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-7058, to serve as the Regional Site Project Officer (RSPO) for this Contract.

4. The State has designated Gary Gifford, Project Coordinator, Division of Solid and Hazardous Waste Management, 2110 East Aurora Road, Twinsburg, Ohio 44087, (216) 425-9171, as State Project Coordinator for this Contract.
5. The Regional Site Project Officer, together with the State Project Coordinator, are authorized to make decisions concerning the remedial investigation/feasibility study so long as such decisions do not enlarge the scope of the work plan or increase the cost of performance under this Contract.

D. U.S. EPA Responsibilities

1. In addition to the obligations set forth in paragraph G herein, the U.S. EPA shall arrange for the services of the national zone contractor to perform the Phase II RI and FS as described in the work plan. The U.S. EPA shall, at cost and expense to the U.S. EPA, furnish the necessary personnel, materials, services, and facilities to perform other U.S. EPA responsibilities under this Contract.
2. The U.S. EPA shall consult with the State on matters related to the implementation of the work described in the work plan.

E. State Responsibilities

The State shall, at cost and expense to the State, furnish the necessary personnel, materials, services and facilities to perform responsibilities under this Contract. None of the expenses incurred by the State in performing such responsibilities shall be paid for or reimbursed from the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA (hereinafter "Fund"), nor counted toward any cost-sharing requirements under this Contract or any future contracts or cooperative agreements relating to the site. State responsibilities include: 1) disposal of all wastes generated by State activities at the site; 2) commenting on appropriate project documents; 3) participating in project review meetings where appropriate; and 4) keeping informed on project status.

F. Immediate Removal Action

The terms of this Contract shall not restrict any immediate removal activities conducted pursuant to the National Contingency Plan, 40 CFR, Part 300.65. The U.S. EPA, in consultation with the State, can suspend the activities described in the work plan during any such immediate removal actions.

G. Advance Match Payment

1. The total cost of carrying out the work set forth in the work plan for this contract is \$522,179. The U.S. EPA will provide \$300,000 toward the costs. The State agrees to pay \$222,179 toward the costs. The U.S. EPA and the State agree that these State funds are provided as an advanced match. The U.S. EPA will count the State advance match as a

cash contribution toward the final State cost share at the site. Contribution of these funds, however, does not ensure that Fund-financed remedial actions in addition to the remedial investigation/feasibility study activities included in this Contract and in the work plan attached hereto will be implemented at the site.

2. Payment will be made in the following manner: Within 60 calendar days from the effective date of this Contract, the State shall submit to EPA its payment: 222,179 dollars (\$222,179) as advance match for the State's cost share for remedial actions at the Summit National Site.
3. The State, through a written amendment to this Contract or a Cooperative Agreement application, may request reimbursement of any State funds expended pursuant to this Contract which are not required to meet the final State cost-sharing obligation at the site. Reimbursement to the State by the U.S. EPA is subject to the availability of funds.
4. All payments by the State shall be made payable to U.S. EPA and sent to:

U.S. EPA
Superfund
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

H. Off-Site Storage, Destruction, Treatment or Disposition

No off-site treatment, storage or disposal is anticipated as part of this Contract. However, in the event that the State and the U.S. EPA enter into or amend any agreement in order to take additional remedial actions for which off-site treatment and disposal is required, the State shall provide the assurances required under CERCLA Section 104(c)(3)(B), 42 U.S.C. §9604(c)(3)(B).

I. Operation and Maintenance

No operation and maintenance (O&M) is anticipated by the parties as a result of implementation of this Contract.

J. Future Payment

If the U.S. EPA and the State agree to take remedial action at the site in addition to the remedial investigation/feasibility study activities described in the work plan, to the extent that the State's prior expenditures at the site are less than 10% of the cost of such remedial action, the State shall contribute such additional amounts as are necessary to constitute 10% of the cost of such remedial action in accordance with Section 104(c)(3)(C)(i) of CERCLA, 42 U.S.C. §9604(c)(3)(C)(i).

K. Personnel Safety

The U.S. EPA or contractors for the U.S. EPA shall develop and oversee the implementation of the site safety plan.

L. Access to the Site

1. The State, to the extent of its legal authority, shall secure access to the site for the U.S. EPA or contractors for the U.S. EPA for the purpose of completing the actions required by this Contract and the work plan attached hereto.
2. Representatives of the State shall have access to the site to review work in progress.
3. The U.S. EPA shall not be responsible for any harm to any State representative or other person arising out of, or resulting from, any act or omission by the State in the course of any on-site inspection.
4. The State shall not be responsible for any harm to any U.S. EPA representative, or other person arising out of, or resulting from, any act or omission by the U.S. EPA in the course of any on-site inspection.

M. Availability of Information

1. The State has previously provided to the U.S. EPA necessary information concerning the Summit National site. At the request of the U.S. EPA the State shall provide the U.S. EPA with any further information which is not privileged or attorney work product concerning the site which is in the possession of the State. If such information is submitted by the State pursuant to a claim of confidentiality, said information shall be treated in accordance with the requirements of 40 CFR Part 2. If U.S. EPA receives a request for such information, U.S. EPA shall notify the State of such request and shall consult with the State in evaluating the request. Absent a claim of confidentiality, the U.S. EPA may make such information available to the public without further notice.
2. At the request of the State, and in accordance with applicable Federal law, the U.S. EPA agrees to provide the State with information and reports developed or prepared pursuant to U.S. EPA responsibilities under this Contract. If such information is submitted under a claim of confidentiality, the State agrees not to release such information or reports to the public unless the State first obtains approval from both the U.S. EPA Region V Office of Regional Counsel, and the Regional Site Project Officer. Absent such a claim, the State may make such information available to the public without further notice.

N. Community Relations Plan

The U.S. EPA and the State have jointly developed a Community Relations Plan which the U.S. EPA shall implement in carrying out the work plan.

O. Third Parties

1. This Contract is intended to benefit only the State of Ohio and the U.S. EPA. It extends no benefit or right to any other party.
2. The U.S. EPA does not assume any liability to third persons for losses due to bodily injury or property damage that exceeds the limitations contained in the provisions of 28 U.S.C. Sections 1346(b), 2671-2680. The State does not assume liability to any third persons for losses due to bodily injury or property damage.

P. Negation of Agency Relationship

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of "agency" between the U.S. EPA and the State. Any standards, procedures, or protocols, prescribed in this Contract to be followed by U.S. EPA contractors during the performance of U.S. EPA obligations under this Contract, are for assurance of the quality of the final product of the actions contemplated by this Contract, and do not constitute a right to control the actions of the U.S. EPA. The U.S. EPA, and employees, agents, and contractors of the U.S. EPA, are not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract. The State, and employees, agents and contractors of the State are not authorized to represent or act on behalf of the U.S. EPA in any manner relating to the subject matter of this Contract.

Q. Enforcement and Cost Recovery

1. The State filed suit against responsible parties pursuant to Section 107 of CERCLA seeking response costs and damages to the State's natural resources on October 1, 1981. The State notified U.S. EPA more than thirty days prior to filing suit. U.S. EPA shall notify the State in writing not less than thirty days prior to initiating a judicial or administrative proceeding against a responsible party. Neither party to this Contract shall attempt to negotiate for or collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.
2. The U.S. EPA and the State agree that they will cooperate in efforts to recover their respective costs of response actions taken at the site from the responsible parties which remain defendants in the State's pending lawsuit. This shall include cooperation in the use of evidence and witnesses available to each in the preparation and presentation of any future cost recovery action brought by the State or the U.S. EPA or added to existing litigation by amendment or otherwise, excepting any documents or information which may be privileged or confidential under the provisions of any applicable State or Federal laws, rules, or regulations. By this undertaking the State is not agreeing to cooperate in efforts to recover past or future response costs from responsible parties with whom the State has entered into settlement agreements relating to the Summit National site.

3. The action filed by the State pursuant to CERCLA has been filed in the United States District Court for the Northern District of Ohio, Eastern Division, as authorized by Section 113 of CERCLA.
4. Signature of this Contract does not constitute a waiver of the right of the U.S. EPA or the State to bring an action against any person or persons for liability under Section 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9606 or §9607, or any other statutory provision or common law.

R. Amendments

Any modifications to this Contract must be agreed to, in writing, by both parties.

S. Resolution of Disputes

1. Any disagreements arising under this Contract shall be resolved to the extent possible by the U.S. EPA Regional Site Project Officer and the State Project Coordinator.
2. If any such disagreement cannot be resolved by the U.S. EPA Regional Site Project Officer and the State Project Coordinator, it shall be referred to the Regional Superfund Director for a final resolution in accordance with the requirements of Subpart L of 40 CFR Part 30. For the purposes of resolving disputes under this Contract, the Director is the disputes decision official provided for in Subpart L.
3. The decision of the disputes decision official will constitute the final agency action unless the State files a request for review of that decision with the Regional Administrator, U.S. EPA, Region V in accordance with the requirements of Subpart L of 40 CFR Part 30.
4. If the Regional Administrator confirms the decision of the disputes decision official, the State may seek review from the Assistant Administrator, OSWER, U.S. EPA, in accordance with the requirements of Subpart L of 40 CFR Part 30.

T. Failure to Comply with Terms of the Agreement

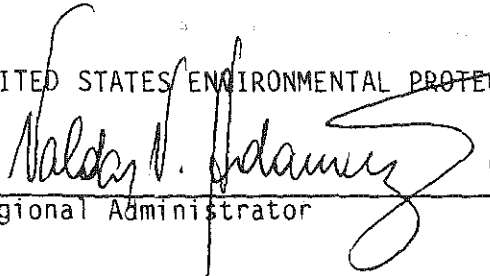
If the State fails to comply with the terms of this Contract U.S. EPA may proceed under the provisions of Section 104(d)(2) of CERCLA, 42 U.S.C. §9604(d)(2). If U.S. EPA fails to comply with any requirements of this Contract, the State may, after providing 60 days notice, seek in the appropriate court of competent jurisdiction, to enforce the Contract or to recover any funds advanced and any costs arising from or incurred because of the breach of the Contract by the U.S. EPA.

U. Termination of the Contract

1. The parties may enter into a written termination agreement which will establish the effective date for the termination of this Contract, the basis for settlement of termination costs and the amount and date of any sums due either party. Such settlement costs will include all project costs incurred, as well as any close-out costs.
2. If at any time during the period of this Contract, performance of either all or part of the work described in the SOW is voluntarily undertaken, or undertaken for any other reason by persons or entities not party to this Contract, this Contract will be modified or terminated as appropriate to allow these actions and, upon modification or termination, shall relieve the parties of further duties to perform those actions undertaken by persons or entities not party to this Contract.
3. This Contract shall remain in effect until all activities described in the work plan have been completed.

In witness whereof, the parties hereto have executed this Contract in two (2) copies, each of which shall be deemed an original.

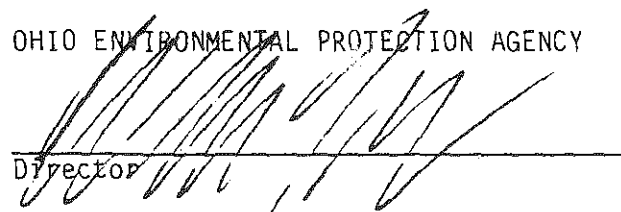
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Regional Administrator

Date

6/30/86

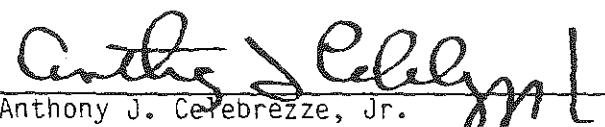
OHIO ENVIRONMENTAL PROTECTION AGENCY


Director

Date

5/27/86

I hereby certify that Ohio EPA has the legal authority to enter into and to fulfill the terms of this Contract.


Anthony J. Cerebrezze, Jr.
Ohio Attorney General

Date

5/13/86

